

### **REMARKS**

Claims 1-28 are pending in the application.

In the present amendment, the claims are amended to remove reference designators. Claim 28 is amended to clarify the claimed invention. Support for claim 28 may be found in the specification, for example, page 11, lines 2-5 and page 15, line 33 to page 16, line 5. No new matter is added.

Claim 27 has been cancelled.

#### **35 U.S.C. 101**

Under 35 U.S.C. 102(a), the Office Action rejects claims 27 and 28. Claim 27 has been cancelled herein obviating the rejection.

Claim 28 is amended and is directed to statutory subject matter namely an information storage medium, which when read by a computer causing the computer to output a media signal stored on the information storage medium.

#### **35 U.S.C. 102**

Under 35 U.S.C. 102(a), the Office action rejects claims 1, 2, 5-9, 11, 15-18, 20 and 21 by Lemma, Negash Aweke: A Temporal Domain Audio Watermarking Technique, (hereinafter "Lemma").

On page 4 of the Office action Lemma page 1089, section II and Fig. 1 are alleged to show applicant's claimed features. Applicant respectfully disagrees and points out that claim 1 recites in part: "mixing at least one section of said media signal with a noise signal for providing a modified media signal, and combining said additional data with said modified media signal for providing a first host modifying media signal." Emphasis added.

The Office points to the Lemma signal  $X_b[n]$  as showing applicant's claimed modified media signal. However, Lemma shows and describes that H is a bandpass filter (Fig. 1) which extracts the part of the audio signal suitable to carry the watermark information. Lemma describes the host signal  $X[n]$  and the output of H is  $X_b[n]$  which is combined with  $W[n]$  (the watermark).

This is clearly different from applicant's claimed mixing at least one section of said media signal with a noise signal for providing a modified media signal. There is no mixing with a noise signal as claimed. The feature is completely lacking from the sections of Lemma cited in the Office action. Therefore, independent claim 1 includes features neither found nor suggested in the cited reference and applicant requests the rejection be withdrawn.

Claims 2, 5-9, and 11 depend from claim 1 and include at least the above mentioned features, plus additional distinguishing features. Applicant essentially repeats the above argument for each dependent claim and requests withdrawal of the rejections.

Independent claim 15 is directed to a device for embedding additional data in a media signal. The device includes a first adding unit for mixing at least one section of said media signal with a noise signal in order to provide a modified media signal, and a combiner unit for combining said additional data with said modified media signal for providing a first host modifying media signal.

Claims 16-18, 20 and 21 depend from claim 15 and include at least the above mentioned features, plus additional distinguishing features. Applicant essentially repeats the above discussion from claim 1 to apply the reasoning as to why claims 15-18, 20 and 21 are likewise different from, and non-obvious in view of Lemma.

Withdrawal of the rejection of claims 1, 2, 5-9, 11, 15-18, 20 and 21 under 35 U.S.C.102(a) is respectfully requested.

**35 U.S.C. 103**

Under 35 U.S.C. 103(a), the Office Action rejects claims 3 and 4 over Lemma in view of Moskowitz et al.

Claims 3 and 4 depend from claim 1 and include at least the above mentioned features, plus additional features. The above mentioned features are not found or suggested in Moskowitz et al., therefore, the rejection should be withdrawn since the combination of references fails to teach or even suggest all the claimed features.

Furthermore, the Office action simply provides conclusory remarks with regard to obviousness of the invention. The Office action fails to provide any supporting evidence to support these conclusory remarks. Applicant contends that the combination of references fails

to mention or even suggest how these statements in the Office action apply to applicant's claimed invention. KSR makes clear that rejections on obviousness cannot be sustained by mere conclusory statements; instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. KSR requires that an Examiner provide "some articulated reasoning with some rationale underpinning to support the legal conclusion of obviousness." (KSR Opinion at p. 14). An Examiner must "identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does," (KSR Opinion at p. 15). And, the Examiner must make "explicit" this rationale of "the apparent reason to combine the known elements in the fashion claimed," including a detailed explanation of "the effects of demands known to the design community or present in the marketplace" and "the background knowledge possessed by a person having ordinary skill in the art." (KSR Opinion at p. 14). Anything less than such an explicit analysis may not be sufficient to support a prima facie case of obviousness.

For at least the foregoing reasons applicant respectfully submits that the combination of Lemma and Moskowitz et al. are different from, and would not render obvious, the invention recited in claims 3 and 4.

Under 35 U.S.C. 103(a), the Office action also rejects claims 10, 12, 14, 22-24 and 26 over Lemma in view of Zhao, Jian (hereinafter "Zhao").

Claims 10 and 12 depend from claim 1 and include at least the above mentioned features. The above mentioned features are not found or suggested in the combination of Lemma in view of Zhao, therefore, the rejection should be withdrawn.

Claim 14 is independent and includes features similar to those discussed above with respect to claim 1. The features discussed above are likewise not found in Zhao. Therefore, the combination of Lemma in view of Zhao does not teach or even suggest all the claimed features. Thus, the rejection should be withdrawn.

Claim 26 is independent and includes features similar to those discussed above with respect to claim 1. The features discussed above are likewise not found in Zhao. Therefore, the combination of Lemma in view of Zhao does not teach or even suggest all the claimed features. Thus, the rejection should be withdrawn.

Claims 22-24 depend from claim 15 and include at least the above mentioned features of claim 15. The above mentioned features are not found or suggested in the combination of Lemma in view of Zhao, therefore, the rejection should be withdrawn.

Furthermore, in each of the above mention rejections the Office action simply provides conclusory remarks with regard to obviousness of the invention. The Office action fails to provide any supporting evidence to support these conclusory remarks. Applicant contends that the combination of references fails to mention or even suggest how these statements in the Office action apply to applicant's claimed invention. KSR makes clear that rejections on obviousness cannot be sustained by mere conclusory statements; instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. KSR requires that an Examiner provide "some articulated reasoning with some rationale underpinning to support the legal conclusion of obviousness." (KSR Opinion at p. 14). An Examiner must "identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does," (KSR Opinion at p. 15). And, the Examiner must make "explicit" this rationale of "the apparent reason to combine the known elements in the fashion claimed," including a detailed explanation of "the effects of demands known to the design community or present in the marketplace" and "the background knowledge possessed by a person having ordinary skill in the art." (KSR Opinion at p. 14). Anything less than such an explicit analysis may not be sufficient to support a prima facie case of obviousness.

Under 35 U.S.C. 103(a), the Office Action also rejects claims 13 and 25 over Lemma in view of Zhao and Strolle et al.

Claims 13 depends from claim 1 and claim 25 depends from claim 15. Each claim includes at least the above mentioned features. The above mentioned features are not found or suggested in the combination of Lemma, Zhao and Strolle; therefore, the rejection should be withdrawn. Furthermore, in each of the above mention rejections the Office action simply provides conclusory remarks with regard to obviousness of the invention. The Office action fails to provide any supporting evidence to support these conclusory remarks. Anything less than such an explicit analysis may not be sufficient to support a prima facie case of obviousness.

**Conclusion**

In view of the foregoing, Applicants respectfully request that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application in condition for allowance. If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,

By: /Brian S. Myers/  
Brian S. Myers  
Registration No.: 46,947  
Myers Wolin, LLC  
973-401-7157

**Please direct all correspondence to:**  
Larry Liberchuk, Esq.  
U.S. PHILIPS CORPORATION  
P.O. Box 3001  
Briarcliff Manor, NY 10510-8001